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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 37 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHNADKANT AND COMPANY

Versus

BARODA FERRO ALLOYS AND INDUSTRIES LTD.

Appearance:

1. COMPANY PETITION No. 37 of 1995

MR SN SOPARKAR for Petitioner

MR PUJ for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/03/2001

ORAL JUDGEMENT

The petitioner has filed this petition under sections 433 and 434 of the Companies Act, 1956 for passing the order of winding up of M/s Baroda Ferro Alloys & Industries Ltd., Baroda on the ground that the respondent Company is unable to pay its debts. This

Court issued notice on 30.3.1995 and made it returnable on 19.4.1995. After considering the reply, this Court, by its order dated 21.12.1995, admitted the petition and ordered advertisement to be published in Indian Express (English) and Gujarat Samachar (Gujarati), Baroda edition, by fixing 30.1.1996 being the date of final hearing.

It appears that the said order was challenged by filing OJ Appeal and the learned Company Judge stayed his own order. On 1.5.1996, this Court, in its order observed that the OJ Appeal was subsequently withdrawn as informed by the learned advocate appearing for the petitioner. In view of this development, the admission of the petition was required to be advertised. Accordingly, this Court gave further directions of advertisement of the hearing of the petition in the newspapers and fixed the hearing on 8.7.1996. There is no dispute that the hearing of the petition is duly advertised in newspapers as also published in the Government Gazette. Mrs. Soparkar, learned Counsel for the petitioner places on record the copy of the Government Gazette containing publication of hearing of the petition.

The petitioner in the petition has claimed Rs. 4,50,707.36 being the principal amount and adding interest thereon, has claimed Rs. 5,35,689/- and accordingly issued statutory notice. It appears that in pursuance to the directions issued by the Division Bench of this Court in OJ Appeal, the respondent- Company had deposited Rs. 1.11 lacs and as per the directions of the Division Bench, the petitioner had withdrawn the said amount. Except the said amount, the respondent has not paid any other amount. The matter has remained pending for all these years and during the pendency of the petition, no attempt whatsoever has been made by the respondent to clear the dues. It is, however, the say of Mr. Puj, learned Counsel for the respondent company that GSFC has taken over the respondent Company by exercising powers under section 29 as the respondent Company did not clear the dues of the said institution. Be that as it may. The fact remains that the respondent Company is unable to pay its debts and it has become commercially insolvent and lost its substratum and is, therefore, required to be wound up under the provisions of Companies Act.

I, therefore, allow this petition and order the respondent Company M/s Baroda Ferro Alloys & Industries Ltd., Baroda to be wound up.

The OL attached to this Court is appointed as OL. As a consequence of the order of winding up, the OL is required to take possession of the assets of the respondent Company. However, it is submitted by Mr. Puj, learned Counsel for the respondent Company that the respondent Company has challenged the action of GSFC of taking over possession of plant and machinery of the respondent Company and subsequently selling the same in favour of third party i.e. Maruti Induction Pvt.Ltd., by filing a petition being Special Civil Application No. 8477 of 1997 in this Court which is pending. This Court, in the said petition, has also passed an order directing the parties to maintain status quo. In view of this, it would not be proper for this Court to direct the OL to take possession of the assets of the respondent Company. In the circumstances, OL shall make an application to be joined as party in the said petition to justify his right to take possession of the assets of the respondent Company (in liquidation).

This petition is accordingly allowed with no order as to costs.

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